IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.760 OF 2000.

M/s.Quality Printing Press : Appellants.

versus

Municipal Corporation of

Greater Mumbai. : Respondent.

Mr.J.A.Reis with Mr.Y.M.Choudhari for the appellants.

Mr.J.J.Xavier for the BMC.

CORAM : D.G.DESHPANDE,J.

DATED : 22nd August 2005.

JUDGMENT :-

1. Heard advocates for the appellants and respondent. The appellant is the original plaintiff. The plaintiff had filed a suit against the respondent for a declaration and for consequential reliefs.

2. The case of the appellant/plaintiff was that the plaintiff was carrying business of printing and packaging in the name of Quality Printing Press at Sunrise Estate, Halav Pool Road, Kurla West as described in the plaint in detail. The factory was being run by the appellant on the licence issued by the Municipal Corporation. The structure, where the factory was being run, was legal and lawful structure. The appellant had no objection for road widening and for demolition of the structure for that purpose, but his contention was that that he should have been given alternate accommodation. But the Municipal Corporation wanted to demolish the structure without following due process of law or without offering any alternate site and, therefore, the suit came to be filed being a L.C.Suit No.1112/88. Injunction was granted in the suit against the Municipal Corporation from demolishing the structure. However, in disobedience of the said order, the structure came to be demolished. Therefore, the plaintiff took out a notice of motion for contempt vide Notice of Motion No.1532 of 1988. At that time the defendant/corporation also took out a motion

being Notice of Motion No.114 of 1995 directing the plaintiff to accept the alternate site at Jogani Industrial Estate and, the Court by order dated 12.7.95 directed the defendant to provide alternate site of the area 850 sq.ft at Jogani Industrial Estate. This was subject to the decision of the suit. Because the case of the plaintiff was that he was entitled to 155 sq.meter of alternate site. But according to the plaintiff, the defendant did not provide him any alternate accommodation. Ultimately plaintiff agreed to take site at Irala Society with permission to construct a structure at his own costs and requested to allot the area equivalent to 155 sq.meter. Then the Municipal Commissioner took necessary decision allotting a site area 1668.40 sq.ft. to the plaintiff. Then the plaintiff submitted a structural Engineer’s opinion and informed the defendant that work of construction would start from 3.11.1998. The defendant also informed the Court by application about the compliance by the plaintiff of all the conditions and requested the plaintiff to withdraw the suit. Therefore, the Suit bearing L.C.Suit No.1112/88 was withdrawn.

3. This plaintiff started construction but the Municipal Corporation issued notice under Section 354A of the BMC Act. Correspondence took place and ultimately the plaintiff was required to file this suit wherein he claimed declaration and permanent injunction as per the prayers in the plaint. The suit was resisted by the defendant on number of grounds. The trial Court framed eight Issues and three Additional Issues. But dismissed the suit of the plaintiff on Issue No.2 i.e. the suit was not maintainable without Notice under Section 527 of the BMC Act. The other Issues are answered in favour of the plaintiff. Therefore, this appeal.

4. The counsel for the appellant contended that the findings of the Court on Issue No.2 are totally wrong. The Plaintiff had in fact given a notice under Section 527 of the BMC Act. Copy of that notice is annexed in the compilation which is at page 277. It is a notice addressed to Shri.Girish Gokhale, the Municipal Commissioner. It is dated 1.3.1999 and at the end it is stated that this notice be treated as Notice under Section 527 of the BMC Act. The trial Court in para 35 discussed this Issue No.2 and held that

this is not a notice under section 527 and ingredients of section 527 of the BMC Act are not there in the notice.

5. Counsel for the respondent tried to contend that this notice is not the notice under Section 527 of the BMC Act and the dismissal of suit on that count was proper.

6. It is difficult to accept this contention of the respondent’s advocate. I am reproducing the entire Notice (Exhibit "U" at page No.277 of the compilation) :-

Respected Sir,

Sub : Request to allot suitable alternate site at Irla Society Road, Over Irla Nalla, Vile-Parle (West), in K/West Ward for M/s. Quality Printing Press, which was demolished during the Widening of the Road, at Sun Rise Estate, Halav Bridge Road, Kurla (W), Mumbai - 400 070 falling under the jurisdiction of ’L’

Ward.

Ref : Letter from Ward Officer, K/West Ward Bearing No.KW/38460/AEM dated 26.2.99 And our reply dated 1.3.1999.

. We refer to your aforesaid letter dated 26.2.1999, whereby you have illegally reduced the area which was allotted to us from 155 sq.mtrs. i.e. 1668.40 sq.ft. to 850 sq.ft. at Irla Society Road over Irla Nalla Vile-Parle (West) in K/West Ward in lieu of the structure demolished during the widening of the Road in 'L' Ward without assigning any reason or justification whatsoever. We have vide our reply dated 1.3.1999 (served upon your office on the same day), set out our submittsions and have also set out that you are not entitled to reduce the said area as sought to be done. We crave leave to refer to and rely upon the said reply. We repeat the reiterate all our statements and submissions made in the said reply.

. Under the aforesaid circumstances, we hereby call upon you to forthwith withdraw your letter dated 26.2.1999 bearing reference

No.KW/38460/AEM and allow us to construct the structure admeasuring 1668.40 sq.ft. as per original allotment and final permission granted by your letter dated 30.9.1998 and 30.10.1998 failing which we shall be constrained to initiate legal proceedings, as may be deemed fit and necessary, against your entitely at your own risk as to costs and consequences thereof.

. Please treat this notice as Notice Under Section 527 of the B.M.C. Act.

Yours faithfully,

sd/-

(DINESH C. JOSHI)

C.A. to Nautamlal Shamji Mehta

For Quality Printing Press.

7. Notice as required by Section 527(a) of the BMC Act has to give with reasonable particularily the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent, if any, for the purpose of a suit. The cause of action is a set of facts with reference to the relief which the plaintiff

is required to state in his notice. When the plaintiff has, in the last para of the notice, stated that notice be treated as Notice under Section 527 of the BMC Act, it is clear that the intention of the plaintiff to file a suit is made known to the BMC. The subject matter of the suit is also brought to the notice by giving Subject and Reference. Reliance is placed by the plaintiff on the entire correspondence between the parties and, prayer is made in the last para to withdraw the letter dated 26.2.1999 and permitted the plaintiff to construct the structure admeasuring 1668.40 sq.ft. as per original allotment and final permission granted by their letter dated 30.9.1998 and 30.10.1998. If perusal of the plaint shows that nothing more is demanded by the plaintiff in this notice, the prayers are in conformity with the demand in the suit notice, the cause of action is also stated, though the word "cause of action" is not used and, therefore, nothing more was required for the plaintiff to state in this notice.

8. There is no prescribed pro-forma of notice under Section 527. Nothing is brought to my notice in that regard by the respondent.

Statutory notice is an intimation of the proposed action to be taken against a public body or the State Government and, if all the facts necessary or which form basis for the suit are mentioned, then there is a compliance to the statutory requirements of giving cause of action. When the plaintiff has relied upon the earlier correspondence which was in possession of the corporation., then each of the contention of the plaintiff now raised in the plaint stands supported by that correspondence and, therefore, there was full compliance to the requirements under section 527 of the BMC Act. The findings of the Court on Issue No.2 are perverse.

9. Since the findings on merits are in favour of the plaintiff and they are not assailed by the respondent at all, this appeal is required to be allowed. No other submissions are made by the advocate for the respondents. Hence I pass the following order :-

:ORDER:

The Appeal is allowed and the suit of the plaintiff is decreed as prayed for.

No order as to costs.

[D.G.DESHPANDE]